

1 BRETT A. AXELROD, ESQ.
 2 Nevada Bar No. 5859
 3 MICAELA RUSTIA MOORE, ESQ.
 4 Nevada Bar No. 9676
5 FOX ROTHSCHILD LLP
 6 3800 Howard Hughes Parkway, Suite 500
 7 Las Vegas, Nevada 89169
 Telephone: (702) 262-6899
 Facsimile: (702) 597-5503
 Email: baxelrod@foxrothschild.com
 mmoore@foxrothschild.com
*[Proposed] Counsel for Martifer Aurora Solar, LLC and
 Martifer Solar USA, Inc.*

Electronically filed January 24, 2014

8 **UNITED STATES BANKRUPTCY COURT**

9 **DISTRICT OF NEVADA**

10 In re

11 MARTIFER SOLAR AURORA, LLC
 12 a Nevada limited liability company

Case No. BK-S-14-10355-abl

Chapter 11

13
 14
 15
 16
 17
**18 DECLARATION OF JAMES
 19 WONG IN SUPPORT OF MOTION
 20 FOR ORDER PURSUANT TO 11
 21 U.S.C. § 364 AND FED. R. BANKR.
 22 P. 4001(c): (I) AUTHORIZING
 23 DEBTORS TO OBTAIN
 24 POSTPETITION FINANCING; (II)
 25 GRANTING RELATED RELIEF;
 26 AND (III) SCHEDULING FINAL
 27 HEARING**

28 Debtor.

Hearing Date: OST PENDING
 Hearing Time: OST PENDING

- 22 JAMES WONG, being duly sworn, hereby deposes and declares under penalty of perjury:
- 23 1. I am over the age of 18, am mentally competent, and if called upon to testify as to the
 24 statements made herein, could and would do so.
- 25 2. I am the Principal and founder of Armory Consulting Co. I have approximately 20
 26 years of corporate restructuring and related advisory experience.

1 3. My experience includes a variety of industries such as real estate, transportation,
 2 retail, restaurants, gaming, construction, automotive, healthcare and not-for-profits. I have been
 3 retained as financial advisor for both debtors and creditors, as well as for expert witness
 4 assignments.

5 4. I began my career at Merrill Lynch, and was previously with KPMG and Grant
 6 Thornton's restructuring practices. I graduated from Stanford University with an M.S. in Business
 7 Management and from UCLA with a B.A., and am a Certified Insolvency and Restructuring
 8 Advisor.

9 5. I was engaged prior to the commencement of these chapter 11 cases as the financial
 10 advisor to Martifer Solar USA, Inc. ("Martifer USA") and Martifer Aurora Solar, LLC ("Aurora"),
 11 and collectively with Martifer USA, "Debtors"). I submit this declaration in support of the Debtors'
 12 motion to approve post-petition financing (the "DIP Motion").¹

13 6. In my capacity as financial advisor for Debtors, I have reviewed Debtors' books and
 14 records and consulted with Debtors' management regarding Debtors' financial condition, including
 15 Debtors' respective business plans, financial statements and projections, business analyses and
 16 reports, contracts and other legal documents, notes and correspondence and similar items

17 7. Based on all of the foregoing, I have developed a familiarity with: (a) the Debtors'
 18 books and records, which are maintained in the ordinary course of business under the control of
 19 officers of the Debtors' respective executive and senior management; (b) the Debtors' respective
 20 business and financial histories, and their current business and financial situations; (c) the financial
 21 and operation details of the Debtors' business operations; and (d) the solar panel and renewable
 22 energy industry, generally.

23 8. Except as otherwise stated herein, if called as a witness, I could and would
 24 competently testify to the matters set forth herein from my own personal knowledge.

25 9. With the added expenses associated with the Chapter 11 Cases, Debtors require
 26 additional financing in order maintain operations and remain current on expenses. Operationally,

27 28 ¹ Unless otherwise defined, capitalized terms used herein shall have the meanings ascribed to
 them in the DIP Motion.

1 Debtors require financing to ensure uninterrupted payment of expenses for the operation of their
 2 businesses, including payroll and other general and administrative expenses, paying subcontractors
 3 and all other operational needs. Debtors also need to pay expenses associated with the Chapter 11
 4 Cases, including professional fees and expenses and United States Trustee fees.

5 10. As set forth in the Initial Cash Budget, Debtors will need to borrow approximately
 6 two million dollars (\$2,000,000) through the week ending April 14, 2014 in order to meet their
 7 operating expenses, make interest-only adequate protection payments to the Pre-Petition Lender and
 8 fund expenses for the administration of the Chapter 11 Cases. The Initial Cash Budget revenues are
 9 based on Debtor's internally-prepared projections-if actual revenues do not meet projections, then
 10 Debtors will need to increase borrowings under the Postpetition Financing above the amounts set
 11 forth in the Initial Cash Budget. Therefore, in order to ensure that Debtors will have sufficient
 12 liquidity to withstand fluctuations in the collection of receivables, and to fund the costs of
 13 administering the Chapter 11 Cases, Debtors believe that they may require up to five million dollars
 14 (\$5,000,000) in postpetition financing. With these funding requirements in mind, Debtors negotiated
 15 the DIP Agreement with Lender, which provides for up to five million dollars (\$5,000,000) in
 16 Postpetition Financing borrowings.

17 11. Debtors are seeking authorization to use Postpetition Financing pending a final
 18 hearing on the Motion in order to avoid immediate and irreparable harm to the estates. In order to
 19 keep Debtors' business operational, Debtors must be able to pay their subcontractors for work
 20 performed, satisfy other ongoing working capital needs and expenses of operation, including,
 21 without limitation, employee payroll expenses, and fund the costs of administering Debtors' estates,
 22 including without limitation, fees assessed by the Office of the United States Trustee and the Clerk
 23 of Court and fees and expenses of estate professionals. As indicated by the Initial Cash Budget,
 24 Debtors project that they will need to incur nearly one million dollars (\$1,000,000) in Postpetition
 25 Financing borrowings through the first four full weeks after the Petition Date (ending on February
 26 10, 2014). Accordingly, timely approval of the proposed DIP Financing is critical to preserving the
 27 going concern value of Debtors' estates from the outset of the Chapter 11 Cases.
 28

1 12. Debtors' particular financial circumstances make it exceedingly unlikely that it could
 2 obtain credit without offering the protections of a superpriority claim and a lien on available
 3 collateral. As of the Petition Date, all of Debtors' personal property (other than Avoidance Actions)
 4 was encumbered by liens in favor of the Pre-Petition Lender. Accordingly, there are no
 5 unencumbered assets (other than Avoidance Actions) nor any readily available funds that could be
 6 used to secure or repay post-petition financing on an unsecured administrative expense claim basis.
 7 In addition, Debtors' chief source of revenue to service or repay postpetition financing is the
 8 proceeds of accounts receivable, which proceeds (in addition to being part of the Cathay Collateral)
 9 are subject to fluctuations in terms of timing and collectability.

10 13. Under these circumstances, the price of "new money" postpetition financing would
 11 have been prohibitive for Debtors. Even if a previously uninvolved party could get comfortable with
 12 the level of risk attendant to financing the Chapter 11 Cases, it undoubtedly would demand a hefty
 13 cost premium as part of any financing proposal in order to compensate for such risk. While an
 14 existing lender often will be a viable option for postpetition financing, the Pre-Petition Lender was
 15 not interested in increasing its credit exposure beyond the current scope of borrowings (and certainly
 16 not on an unsecured administrative claim basis). Therefore, Debtors had few options when it came
 17 to locating a cost-effective source of funding for the Chapter 11 Cases.

18 14. Nonetheless, Debtors made an extensive effort to locate potential sources of post-
 19 petition financing. I personally participated in many discussions with potential financing sources.
 20 Debtors contacted over twenty (20) potential sources of post-petition financing, and five (5) parties
 21 signed Non-Disclosure Agreements. Despite extensive efforts, as of the Petition Date, Debtors had
 22 not received any offers (much less a firm commitment) from other sources of potential post-petition
 23 financing other than Lender. Debtors canvassed the market and were not able to find any other
 24 readily available funding source willing to provide credit to Debtors on an unsecured administrative
 25 expense claim basis, much less on terms as favorable as the Postpetition Financing.

26 15. The interest rate and other terms of the Postpetition Financing are favorable in today's
 27 market. I assisted Debtors in canvassing the market, and we have not yet been able to find any other

1 readily available funding source willing to provide credit to Debtors on an unsecured administrative
2 expense claim basis, much less on terms as favorable as the Postpetition Financing.

3 16. I believe that the terms of the DIP Agreement are very favorable under the
4 circumstances. Lender negotiated for a junior lien on all assets. Thus, this is not a case where an
5 over-reaching (and/or oversecured) pre-petition lender seeks to enhance its collateral package at the
6 expense of unsecured creditors. Instead, Lender simply requested reasonable protections to secure
7 repayment of the Postpetition Financing.

8 17. Similarly, the interest rate of nine percent (9.0%) is reflective of the competitive rates
9 available in the market for financing secured by a junior lien on assets that may not be readily
10 convertible to cash.

11 18. Furthermore, the DIP Agreement provides for a reasonable Carve-Out, which covers
12 fees and expenses of professionals employed by a statutory committee (if appointed) as well as
13 professionals employed by Debtors. The Events of Default and conditions to borrowing are
14 customary in postpetition financings, and Lender's ability to exercise remedies upon the occurrence
15 of an Event of Default expressly allows for a hearing before the Bankruptcy Court on shortened
16 notice to resolve any dispute. I do not believe that via the DIP Agreement Lender seeks to control or
17 restrict Debtors' ability to prosecute the Chapter 11 Cases with limitations or prohibitions on
18 Debtors' ability to use cash collateral or propose a plan.

19 I verify under penalty of perjury that the foregoing statement is true and correct to the best of
20 my information, knowledge and belief.

21 Executed this 24th day of January 2014.

22 
23 JAMES WONG
24
25
26
27
28